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PATENT  
Attorney Docket No. 2745-9  
7/2/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Hong Guo et al.

Serial No.: 10/053,740

Filed: January 24, 2002

For: Topology Aware Scheduling for a  
Multiprocessor System

Group Art Unit: Not Yet Assigned

Examiner: Not Yet Assigned

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

**PETITION FOR RETROACTIVE LICENSE**

Applicants hereby petition for a retroactive license under 35 U.S.C. § 184 and 37 C.F.R. 5.25 to cover the filing through error and without deceptive intent of an application in Canada on December 20, 2001 before the filing of a corresponding application in the United States on January 24, 2002 (Serial No. 10/053,740), the above application claiming priority under § 119 of the Canadian application. The Canadian application was granted Serial No. 2,365,729. The application has not been filed in any other foreign country.

At the time the Canadian application was filed, the subject matter of the application was not under any secrecy order and it is not currently under any secrecy order.

To show that the initial filing in Canada was done through error and without deceptive intent, submitted herewith is a declaration of applicants' Canadian agent,

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Jeff Pervanas, who was responsible for the preparation and filing of the patent application in Canada on December 20, 2001. Also enclosed is a declaration of inventor C. A. N. Smith.

The declarations show the acts leading up to the filing of the initial Canadian application and that none of the parties involved was aware that a foreign filing license first had to be obtained from the U.S. Patent and Trademark Office before this Canadian application could be filed. Consequently, it is believed the declarations meet the requirement of 37 C.F.R. 5.25(a)(3)(iii) of a showing of error without deceptive intent without the required license under § 5.11 first having been obtained.

Finally, enclosed is a check for \$130.00 to cover the fee required by 37 C.F.R. 5.25(a)(3)(iv).

Because applicants meet all of the requirements for a retroactive license as set forth in 35 U.S.C. § 184 and 37 C.F.R. 5.25, a license regularizing the filing in Canada is hereby requested.

Please grant any other fees due in connection with the filing of this petition and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: April 25, 2002

By: Arthur S. Garrett

Arthur S. Garrett  
Reg. No. 20,338

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Washington, DC 20231

Sir:

**DECLARATION**

I, Jeff Pervanas, am a registered Patent Agent in Canada and a partner of the firm of Riches, McKenzie & Herbert LLP of Toronto, Canada.

In June of 2001 I was requested by Roula Galanakis of Platform Computing (Barbados) Inc. of Bridgetown, Barbados to prepare and file a patent application in Canada relating to an invention entitled Topology Aware Scheduling for a Multi-Processor System. The application was to be in the names of H. Guo, L. E. Lee, C. A. N. Smith, and W. S. McMillan.

I prepared a draft application based on initial disclosure materials provided to me by Mr. Guo as well as continuous supplemental information I received from him.

During the preparation I met with Mr. Guo and as a result of our discussions it became apparent that an additional inventor should be named in this case, namely

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Mr. L. I. Lumb. It was my understanding that all of the inventors were residents of Canada at the time the invention covered by this application was made.

On December 20, 2001, after receiving approval from Mr. Guo, I filed in the Canadian Patent Office a patent application entitled Topology Aware Scheduling for a Multiprocessor System. The application was assigned Serial No. 2,365,729.

On January 18, 2002, I sent the necessary documents to the law firm of Finnegan, Henderson, Farabow, Garrett & Dunner LLP of Washington, D.C. requesting the filing of a corresponding application in the United States Patent and Trademark Office claiming priority of the Canadian application.

After receiving a letter dated January 24, 2002 from Mr. E. F. Chapman of the firm inquiring about the location of Mr. Smith when he made his contribution to the invention because he had a U.S. post office address, upon inquiry of the relevant parties I learned on February 20, 2002 that inventor C. A. N. Smith was, in fact, a resident of the United States at the time he made his contribution to the invention. As a result and because the application was first filed in Canada, I realized that a license for the United States Patent and Trademark Office should have been obtained before this case was filed.

On February 21, 2002 I wrote to Mr. E. F. Chapman requesting he take the steps necessary to obtain a retroactive foreign filing license.

That prior to February 20, 2002 I was not aware that Mr. C. A. N. Smith was located in the United States at the time he worked on the invention. Consequently, the filing of the Canadian application without first obtaining a license from the United States

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Patent and Trademark Office to do so was done through error and without deceptive intent on my part.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

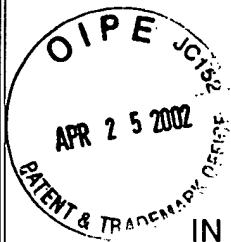
April 15, 2002

  
Jeff Pervanas

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Washington, DC 20231

Sir:

**DECLARATION**

I, Christopher Andrew Norman Smith am employed by Platform Computing  
(~~Barbados~~) Inc

I am a co-inventor with H. Guo, L. I. Lumb, M. W. Lee, and W. S. McMillan of the  
invention covered by the above patent application Serial No. 10/053,740, filed  
January 24, 2002 which claimed priority of Canadian patent application No. 2,365,729  
filed in Canada on December 20, 2001.

That I communicated with Mr. Guo during the preparation of the Canadian  
patent, but I never had any contact with the Canadian patent agent or his firm who filed  
the Canadian patent application.

I was not aware that since I resided in the United States at the time I contributed  
my part as a joint inventor to the invention being claimed in this application that it was  
necessary to obtain from the United States Patent and Trademark office a foreign filing

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license before the Canadian application was filed. Until the present problem arose, I had not been aware of the need in these circumstances to obtain a foreign filing license, and, in fact, I had never heard of such a license.

Consequently, the filing of the Canadian application without first obtaining a license to do so was done through error and without deceptive intent on my part.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: \_\_\_\_\_

Apr. 5, 2002

  
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Christopher Andrew Norman Smith

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